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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re MICHELE R., a Person Coming
Under the Juvenile Court Law.**

**CONTRA COSTA COUNTY
CHILDREN & FAMILY SERVICES
BUREAU.,**

Plaintiff and Respondent,

v.

M.P.,

Defendant and Appellant.

A123992

**(Contra Costa County
Super. Ct. No. J07-01575)**

M.P. (mother) appeals from an order of the juvenile court terminating its dependency jurisdiction over her daughter Michele R. and awarding legal and physical custody to Michele's father, A.R. (father). Mother argues: (1) the court applied the wrong legal standard when it terminated jurisdiction; (2) the facts of the case required continuing supervision by the juvenile court; and (3) the court abused its discretion when it ordered that mother would have no visitation with Michelle. We affirm.

I. *FACTUAL AND PROCEDURAL HISTORY*

A. *Jurisdiction/Disposition*

Nine-year-old Michele lived with mother in the garage of their home while an unrelated man rented the inside of the house. During an argument between mother and the tenant, Michele telephoned the police and reported that a man was trying to stab her mother. Investigating officers discovered that the garage in which mother and Michele were living was crowded and dirty, containing spoiling food and animal feces. Michele was removed from the home and temporarily placed with father, the noncustodial parent.

The Contra Costa County Bureau of Children and Family Services (Bureau) filed a petition alleging that Michele was a dependent child within the meaning of Welfare and Institutions Code section 300, subdivisions (b) and (c).¹ Mother pled no contest to an amended version of the petition alleging that her residence was a health hazard, that she had used inappropriate physical discipline on Michele in the past, and that she had emotionally abused Michele by engaging in verbal altercations with others in her presence. Father pled no contest to an allegation that he had failed to protect Michele from mother. In its report prepared for the dispositional hearing, the Bureau indicated that it was concerned about mother's mental health issues, her lack of cooperation and her failure to take responsibility for her actions. The court removed Michele from mother's custody, placed her with father, and ordered family services for both parents and visitation for mother.

B. *Six-Month Review Hearing*

At the six-month review hearing, the Bureau advised the court that Michele was doing well in father's home and felt safe in his care. Michele had requested that all visits with mother be supervised because she did not feel safe with her.

Mother had initially visited Michele, but then stopped for several months because she did not want the visits to be supervised. During one visit at mother's home, Michele accompanied mother into a bedroom without the social worker and came out a short time

¹ Further statutory references are to the Welfare and Institutions Code.

later saying she was going to play with the pets. Mother advised the social worker that Michele had just revealed she was molested in father's home, but mother refused to speak with the social worker in Michele's presence. The social worker later asked Michele some questions and raised the issue with Michele's therapist, but Michele did not say she had been molested.

Mother failed to comply with other aspects of her reunification plan. She refused to follow a mental health assessor's recommendation that she participate in therapy. She was combative and frequently engaged in verbal and physical altercations. Mother "focused persistently on what people have done wrong to her" and appeared to have no awareness of how her behavior affected others. She continued to believe she had been "set up" and had done nothing wrong.

Despite the court order requiring only supervised visitation, mother had made several attempts to contact Michele at school. At one point she showed up disguised in dark glasses and clothing she did not usually wear. Michele was afraid that mother would try to take her away and she would become upset and cry when she saw her.

The court continued the dependency case and ordered an additional six months of services.

C. Restraining Order

Shortly after the six-month review hearing, mother used her car to prevent father and Michele from driving away from a relative's home. She told Michele to come with her, and when Michele refused, mother became angry and said that father was not her real father. Mother also contacted Michele during an after school field trip. The court granted the Bureau's request for a restraining order and ordered no contact between mother and Michele.

D. Twelve-Month Review Hearing/Termination of Dependency

At the 12-month review hearing, the Bureau recommended terminating the dependency proceedings and placing Michele in father's sole custody with no visitation with mother. The Bureau reported that Michele continued to do well in father's home, that she was in good health and developmentally on target, that she enjoyed school and

was performing well, and that while she was a little aggressive during play therapy, she participated actively and was generally a respectful child. Michele and father had been participating in family therapy and they communicated well with each other. Michele's therapist and court-appointed attorney concurred in the recommendation that custody be given to father with no visitation with mother.

Mother had remained uncooperative and had yet to enroll in therapy or complete a parenting class. She had completed an anger management class, but had not exhibited any of the skills taught. Michele did not feel safe with mother and requested that they have no visits. Regarding mother's claim that Michele had been molested, Michele had not confirmed that allegation to the social worker or her therapist. Michele's therapist concluded that either Michele was in denial or mother had fabricated the story. Michele's appointed counsel indicated that Michele was very happy with father and had always denied to her that a molestation occurred.

Mother presented evidence that Michele had performed poorly on a standardized test given by the school to measure a child's knowledge and performance at each grade level. Mother argued that the juvenile court should retain jurisdiction to monitor Michele's academic progress. Mother also argued that it would be inappropriate to terminate the dependency case when the molestation allegation had not been definitively resolved and father had recently moved with Michele to a new residence.

Citing section 364, the juvenile court dismissed the dependency case and awarded father sole legal and physical custody. The court also continued the restraining order and ordered that there be no visitation between mother and Michele. Mother appeals.²

² The Bureau moved to dismiss the current appeal as moot based on a subsequent order reinstating the dependency after mother obtained visitation rights in family court. We have denied the motion to dismiss by a separate order and have no occasion to consider the propriety of this subsequent reinstatement or the current status of mother's visitation rights.

II. DISCUSSION

A. Order Terminating Dependency Proceedings

Mother argues that the case must be remanded because the trial court utilized the wrong legal standard when it terminated dependency jurisdiction. She notes that the sole authority cited by the court was section 364, which applies only to those cases in which a child was declared a dependent but allowed to remain in the custodial parent's home. We agree the court relied upon the wrong statute, but conclude this did not affect the result in this case.

Section 364 applies when a child has been declared a dependent under section 300 but "is not removed from the physical custody of his or her parent or guardian. . . ." (§ 364, subd. (a).) In such cases, the court "shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of the evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn." (§ 364, subd. (c).) Because Michele was removed from mother's custody and placed with father, section 364 was not the controlling statute. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1450 (*Janee W.*); *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 263-264.)

This case is governed instead by section 361.2, which provides that when a child is removed from the custodial parent, the court must determine "whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300. . . ." (§ 361.2, subd. (a).) If a nonoffending, noncustodial parent wishes to assume custody, the child must be placed with that parent unless to do so "would be detrimental to the safety, protection, or physical or emotional well-being of the child." (*Ibid.*) Once the juvenile court has placed the child with the noncustodial parent, it may terminate dependency jurisdiction and enter a custody order, or it may order reunification services to be provided to either or both parents and later determine which parent, if either, shall have custody of the child. (§ 361.2, subd. (b)(1) &(3); see also *In re Adrianna P.* (2008) 166

Cal.App.4th 44, 55.) When determining whether to terminate dependency jurisdiction, the court must consider “whether there is a need for continued supervision.” (*Janee W.*, *supra*, 140 Cal.App.4th at p. 1451.) A court’s decision to terminate dependency jurisdiction under section 361.2 is reviewed for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300 (*Bridget A.*).

The juvenile court in this case terminated jurisdiction because it found that under section 364, the conditions necessitating the dependency no longer existed. It should have instead considered the criteria of section 361.2, and determined “whether there [was] a need for continued supervision, not whether the conditions that justified taking jurisdiction in the first place still exist.” (*Janee W.*, *supra*, 140 Cal.App.4th at p. 1451.) But though the court’s findings were couched in the language of section 364, we may affirm “if the evidence on the appropriate issue was undisputed and supports a finding that there is no need for continued supervision.” (*Id.* at p. 1452.)

By the time of the 12-month review hearing, Michele had lived safely with her father for more than a year and the Bureau had no concerns about his parenting skills. (Contrast *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134 [substantial evidence of need for continuing supervision to monitor transition to father’s home when minor had had only sporadic contact with father for previous ten years].) Mother claimed Michele had revealed a molestation by someone in the father’s home, but the circumstances of the supposed disclosure were suspicious and Michele never made the allegation to her social worker, therapist, or appointed counsel. Mother’s concerns that Michele had performed poorly on one standardized test did not suggest that juvenile court supervision was necessary for her protection, especially when the Bureau’s report reflected that Michele’s overall performance in school was good. Nor did father’s recent move necessitate continuing court involvement when he had no history of placing Michele in unsuitable housing. There is no reasonable probability the trial court would have retained jurisdiction had it applied the standard of section 361.2. (See *In re Celine R.* (2003) 31 Cal.4th 45, 59-60 [harmless error analysis applies in dependency cases].)

For similar reasons, we reject mother's argument that the order terminating dependency jurisdiction was an abuse of discretion. Mother's characterization of father's living arrangements as "unstable," her focus on a single low test score, and her reliance on the unsubstantiated allegations of abuse do not support her argument that the juvenile court's decision to terminate jurisdiction was " ' ' ' ' 'arbitrary, capricious or patently absurd.' " " " " (Bridget A., *supra*, 148 Cal.App.4th at p. 300.)

B. No-Visitation Order

Mother argues that the trial court effectively severed her parental relationship with Michele when it ordered that she have no visitation. She suggests the court could have instead ordered therapeutic visitation to help restore the mother-daughter relationship. We disagree.

As mother recognizes, the juvenile court may issue exit orders determining visitation rights when it terminates its jurisdiction over a dependent child. (§ 362.4.) In making such orders, the court must consider the best interests of the child. (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) Conversely, a court may deny visitation to a parent when it would be detrimental to the child. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) We review exit orders regarding visitation for abuse of discretion. (*Bridget A.*, *supra*, 148 Cal.App.4th at p. 300; *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.)

There was no abuse of that discretion in this case. Mother had a history of disobeying visitation orders and making unauthorized contact, a pattern of behavior that was traumatic for Michele and culminated in a restraining order.³ Michele did not want visits with mother and was fearful that mother would try to take her away. Michele's therapist did not believe visitation with mother should be allowed. The juvenile court reasonably concluded that visitation would be detrimental given Michele's "fears and concerns in that regard and the past history of the case."

We also reject mother's claim that the court should have tried to preserve her relationship with Michele by allowing therapeutic visits. The court was not required to

³ We reject the Bureau's claim that mother forfeited her right to challenge the court's exit orders when she failed to appeal the initial issuance of the restraining order.

order such visits when mother had consistently refused to attend therapy and continued to believe she did not have any issues that needed to be addressed.

III. *DISPOSITION*

The order terminating the juvenile court's jurisdiction is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.